

AMENDED IN SENATE SEPTEMBER 6, 2013

AMENDED IN ASSEMBLY APRIL 30, 2013

AMENDED IN ASSEMBLY APRIL 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1376

Introduced by Assembly Member Roger Hernández

February 22, 2013

An act to amend Sections 11018, 11435.30, 11435.35, 11435.40, and 11435.55 of, and to repeal Sections 11435.45 and 11435.50 of, the Government Code, and to amend Sections 4600 and 4620 of the Labor Code, relating to state government. *Section 4600 of the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1376, as amended, Roger Hernández. ~~Administrative adjudication: language assistance.~~ *Workers' compensation: medical treatment: interpreters.*

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires an employer to provide all medical services reasonably required to cure or relieve the injured worker from the effects of the injury. Under existing law, if the injured employee cannot effectively communicate with his or her treating physician because he or she cannot proficiently speak or understand the English language, the injured employee is

entitled to the services of a qualified interpreter during medical treatment appointments. Existing law requires that, to be a qualified interpreter for these purposes, a person meet any requirements established by rule by the administrative director, as specified.

This bill would provide that the requirement that a person meet any requirements established by the administrative director in order to be a qualified interpreter commences on March 1, 2014. This bill would also make technical nonsubstantive changes.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law requires certain state agencies to provide language assistance in adjudicative proceedings. Existing law requires the State Personnel Board to establish, maintain, administer, and publish annually for these purposes an updated list of certified administrative hearing interpreters and medical examination interpreters it has determined meet certain minimum standards. Existing law requires the Department of Human Resources to designate the languages for which certification shall be established and to establish and charge fees for applications to take interpreter examinations and for renewal of certifications. Existing law authorizes the Department of Human Resources to remove the name of a person from the list of certified interpreters if any specified conditions occurs. Existing law authorizes a hearing agency to provisionally qualify and use another interpreter if a certified interpreter, as specified, cannot be present at the hearing.~~

~~This bill would allow the Department of Human Resources, until December 31, 2018, to maintain and publish lists of certified administrative hearing and medical examination interpreters, as specified. This bill would require a reasonable fee to be collected from each interpreter seeking certification, to cover the reasonable regulatory costs of administering the program. The bill would modify the conditions under which an interpreter who is not included on one of the lists of certified interpreters may act as an interpreter.~~

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: ~~yes~~^{no}. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4600 of the Labor Code is amended to
2 read:

1 4600. (a) Medical, surgical, chiropractic, acupuncture, and
2 hospital treatment, including nursing, medicines, medical and
3 surgical supplies, crutches, and apparatuses, including orthotic and
4 prosthetic devices and services, that is reasonably required to cure
5 or relieve the injured worker from the effects of his or her injury
6 shall be provided by the employer. In the case of his or her neglect
7 or refusal reasonably to do so, the employer is liable for the
8 reasonable expense incurred by or on behalf of the employee in
9 providing treatment.

10 (b) As used in this division and notwithstanding any other
11 ~~provision of law~~, medical treatment that is reasonably required to
12 cure or relieve the injured worker from the effects of his or her
13 injury means treatment that is based upon the guidelines adopted
14 by the administrative director pursuant to Section 5307.27.

15 (c) Unless the employer or the employer's insurer has
16 established or contracted with a medical provider network as
17 provided for in Section 4616, after 30 days from the date the injury
18 is reported, the employee may be treated by a physician of his or
19 her own choice or at a facility of his or her own choice within a
20 reasonable geographic area. A chiropractor shall not be a treating
21 physician after the employee has received the maximum number
22 of chiropractic visits allowed by subdivision ~~(d)~~ (c) of Section
23 4604.5.

24 (d) (1) If an employee has notified his or her employer in
25 writing prior to the date of injury that he or she has a personal
26 physician, the employee shall have the right to be treated by that
27 physician from the date of injury if the employee has health care
28 coverage for nonoccupational injuries or illnesses on the date of
29 injury in a plan, policy, or fund as described in subdivisions (b),
30 (c), and (d) of Section 4616.7.

31 (2) For purposes of paragraph (1), a personal physician shall
32 meet all of the following conditions:

33 (A) Be the employee's regular physician and surgeon, licensed
34 pursuant to Chapter 5 (commencing with Section 2000) of Division
35 2 of the Business and Professions Code.

36 (B) Be the employee's primary care physician and has
37 previously directed the medical treatment of the employee, and
38 who retains the employee's medical records, including his or her
39 medical history. "Personal physician" includes a medical group,
40 if the medical group is a single corporation or partnership

1 composed of licensed doctors of medicine or osteopathy, which
2 operates an integrated multispecialty medical group providing
3 comprehensive medical services predominantly for
4 nonoccupational illnesses and injuries.

5 (C) The physician agrees to be predesignated.

6 (3) If the employee has health care coverage for nonoccupational
7 injuries or illnesses on the date of injury in a health care service
8 plan licensed pursuant to Chapter 2.2 (commencing with Section
9 1340) of Division 2 of the Health and Safety Code, and the
10 employer is notified pursuant to paragraph (1), all medical
11 treatment, utilization review of medical treatment, access to
12 medical treatment, and other medical treatment issues shall be
13 governed by Chapter 2.2 (commencing with Section 1340) of
14 Division 2 of the Health and Safety Code. Disputes regarding the
15 provision of medical treatment shall be resolved pursuant to Article
16 5.55 (commencing with Section 1374.30) of Chapter 2.2 of
17 Division 2 of the Health and Safety Code.

18 (4) If the employee has health care coverage for nonoccupational
19 injuries or illnesses on the date of injury in a group health insurance
20 policy as described in Section 4616.7, all medical treatment,
21 utilization review of medical treatment, access to medical
22 treatment, and other medical treatment issues shall be governed
23 by the applicable provisions of the Insurance Code.

24 (5) The insurer may require prior authorization of any
25 nonemergency treatment or diagnostic service and may conduct
26 reasonably necessary utilization review pursuant to Section 4610.

27 (6) An employee shall be entitled to all medically appropriate
28 referrals by the personal physician to other physicians or medical
29 providers within the nonoccupational health care plan. An
30 employee shall be entitled to treatment by physicians or other
31 medical providers outside of the nonoccupational health care plan
32 pursuant to standards established in Article 5 (commencing with
33 Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety
34 Code.

35 (e) (1) When at the request of the employer, the employer's
36 insurer, the administrative director, the appeals board, or a workers'
37 compensation administrative law judge, the employee submits to
38 examination by a physician, he or she shall be entitled to receive,
39 in addition to all other benefits herein provided, all reasonable
40 expenses of transportation, meals, and lodging incident to reporting

1 for the examination, together with one day of temporary disability
2 indemnity for each day of wages lost in submitting to the
3 examination.

4 (2) Regardless of the date of injury, “reasonable expenses of
5 transportation” includes mileage fees from the employee’s home
6 to the place of the examination and back at the rate of twenty-one
7 cents (\$0.21) a mile or the mileage rate adopted by the Director
8 of Human Resources pursuant to Section 19820 of the Government
9 Code, whichever is higher, plus any bridge tolls. The mileage and
10 tolls shall be paid to the employee at the time he or she is given
11 notification of the time and place of the examination.

12 (f) When at the request of the employer, the employer’s insurer,
13 the administrative director, the appeals board, or a workers’
14 compensation administrative law judge, an employee submits to
15 examination by a physician and the employee does not proficiently
16 speak or understand the English language, he or she shall be
17 entitled to the services of a qualified interpreter in accordance with
18 conditions and a fee schedule prescribed by the administrative
19 director. These services shall be provided by the employer. For
20 purposes of this section, “qualified interpreter” means a language
21 interpreter certified, or deemed certified, pursuant to Article 8
22 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of
23 Division 3 of Title 2 of, or Section 68566 of, the Government
24 Code.

25 (g) If the injured employee cannot effectively communicate
26 with his or her treating physician because he or she cannot
27 proficiently speak or understand the English language, the injured
28 employee is entitled to the services of a qualified interpreter during
29 medical treatment appointments. To be a qualified interpreter for
30 purposes of medical treatment appointments, an interpreter is not
31 required to meet the requirements of subdivision (f), but
32 *commencing March 1, 2014*, shall meet any requirements
33 established by rule by the administrative director that are
34 substantially similar to the requirements set forth in Section
35 1367.04 of the Health and Safety ~~Code~~. *Code, notwithstanding*
36 *any other effective date established in regulations*. The
37 administrative director shall adopt a fee schedule for qualified
38 interpreter fees in accordance with this section. Upon request of
39 the injured employee, the employer or insurance carrier shall pay
40 for interpreter services. An employer shall not be required to pay

1 for the services of an interpreter who is not certified or is
2 provisionally certified by the person conducting the medical
3 treatment or examination unless either the employer consents in
4 advance to the selection of the individual who provides the
5 interpreting service or the injured worker requires interpreting
6 service in a language other than the languages designated pursuant
7 to Section 11435.40 of the Government Code.

8 (h) Home health care services shall be provided as medical
9 treatment only if reasonably required to cure or relieve the injured
10 employee from the effects of his or her injury and prescribed by
11 a physician and surgeon licensed pursuant to Chapter 5
12 (commencing with Section 2000) of Division 2 of the Business
13 and Professions Code, and subject to Section 5307.1 or 5703.8.
14 The employer shall not be liable for home health care services that
15 are provided more than 14 days prior to the date of the employer's
16 receipt of the physician's prescription.

17 *SEC. 2. This act is an urgency statute necessary for the*
18 *immediate preservation of the public peace, health, or safety within*
19 *the meaning of Article IV of the Constitution and shall go into*
20 *immediate effect. The facts constituting the necessity are:*

21 *In order to avoid jeopardizing injured workers' access to*
22 *medically necessary services, it is necessary that this bill take*
23 *effect immediately.*

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26 **All matter omitted in this version of the bill**
27 **appears in the bill as amended in the**
28 **Assembly April 30, 2013. (JR11)**
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